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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,023	01/21/2004	Bruce Owen Griffin	4-23009/P1/CGC 2177	3993

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EXAMINER	
EINSMANN, MARGARET V	
ART UNIT	**PAPER NUMBER**
1751	

DATE MAILED: 05/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/762,023	GRIFFIN ET AL.	
	Examiner	Art Unit	
	Margaret Einsmann	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *28 February 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *12/19/06*
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1- 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The section of this rejection based on the red dye mixture (B) having only four dyes has been overcome by applicant's amendment changing the formulae of dyes VIIe and VIIf . The remaining sections of this rejection are maintained as set forth below.

The rejection of claims 1-22 based on first black dye mixture (D) comprising only two dyes, dye I and dye IV which are two yellow dyes has not been overcome the claim still claims the mixture of dyes I and IV in the alternative; the way it is written the yellow dye II is combined with the red dyeing mixture and the blue mixture as a black-dyeing mixture.

Dye XIIC on top of page 51 has an amine on the left phenyl ring with a missing valence. The examiner is considering the error an obvious typo since the STN search treated it as missing a hydrogen; (NH should be NH_2). The error also needs to be corrected in the description. This dye which is claimed as part of claim 8 has not been corrected.

Claim 6 is so unclear that its metes and bounds cannot be determined. It is being read by the examiner as requiring only one of the dyes or dye mixtures of formulae XIV to XXa+XXb as a replacement for the red-dyeing mixture (B). The correction has not solved the problem. This amended claim still appears to read on the above.

Claim Objections

Regarding claim 9, applicant is required to show antecedent basis in claim 1 for all of the mixtures claimed or else amend the mixtures to properly depend from claim 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-6, 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pichler et al., WO 2002/059216.

This patent relates to a mixture of red azo dyes which can be mixed with blue dyes and/or yellow dyes and form dichromatic and/or trichromatic mixtures as claimed. Patentee's red dye mixture comprises the four red dyes as claimed in applicant's red

mixture (B). See dyes 4-7 on pages 3 and 4. Patentees state that mixtures of four of the red dyes are especially preferred. See pages 6-8, especially pages 8 lines 4- 7. They teach how to make the dye mixture of red dyes as claimed by first forming the mixture of two structurally similar dyes and then mixing two of the component dye mixtures. For forming trichromatic dye mixtures, patentee suggests the addition of applicant's claimed dyes I, II and/or IV, which is applicant's claimed yellow mixture [Patentee's dyes 16, 17 and 15 respectively on page 28]; and as a blue component, applicant's claimed dyes X and XI [patentee's formulae 10 and 11 on page 27]. Pichler et al. also suggest the addition of Disperse red 86 (See page 10), which is applicant's dye XVII as claimed in claim 5. While Pichler et al does not provide working examples of all of the mixtures as claimed, it would have been obvious to the man having skill in the art at the time the invention was made, a dye chemist, that all of the limitations of the dye mixtures as claimed are suggested by Pichler. Regarding the proportions of components claimed, one of ordinary skill in the dyeing art knows that the purpose of trichromatic and dichromatic mixtures is to have sets of compatible colorants that can be mixed together in any proportion desired so that many different colors and shades thereof, from brights to neutrals may be formed so that the needs of the consumer are met. Regarding the use of dispersants as claimed in claims 10 and 11, one skilled in the art knows that it is conventional to use dispersants when dyeing with disperse dyes

Claims 1,4,5,6,12-22 under 35 U.S.C. 103(a) as being unpatentable over Loeffler et al., US 5,484,460. Loeffler teach trichromatic mixtures of disperse dyes and

their utility in dyeing hydrophobic fiber materials with dye dispersants and UV absorbers. See abstract and columns 5 and 6 which teaches mixtures of yellow, red and blue dyes. Applicant's dyes III [col 9 lines 1-8], IV [col 6 lines 33-40], V [col 9 lines 15-20] ,VI [col 8 lines 15-22], IX, Xa and Xb [structure XII in col 6 lines 54-62] and XIV [col 23 second structure] are disclosed as being used in said mixtures; the uv absorber of claim 16 is also disclosed in col 13. The benzotriazole absorber of claims 14 and 15 are not specifically disclosed, however, patentee states at the bottom of column 12 that a UV absorber may be used and those particular ones are only suggested. Accordingly any known UV absorber may be used because it is not inventive to use a compound for its known purpose.

Although patentee discloses the mixtures (A) dyes III and IV as claimed, and the mixture (C) IX, Xa and Xb as claimed, and suggests that all of the disclosed dyes may be used in mixtures and additionally with a UV absorber to dye polyester, there is no working example of such a mixture. It would have been obvious to one having skill in the art as the time the invention was made that all of the dyes disclosed are suitable for use together, and accordingly a successful dye mixture as claimed would be expected.

Response to Amendments and Arguments

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no basis in the originally filed specification for the replacement of the structures of dyes VII e and VIIf with new structures. The declaration of applicant is not persuasive. The declaration is not sufficient to replace the information that was missing from the originally filed disclosure. The statement on the top of page 4 of the declaration does not give one skilled in the art guidance in selecting from the dye products which is the product relating to the red dye mixture of the claims. Applicant further states that the structures are shown in the Pilcher reference. However, there are eight preferred dyes in the Pilcher reference. The dye mixture is not disclosed by specific trade name or any other way in the originally filed specification of this application. The fact that they were commercially available does not define the particular dyes in the dye mixture. Applicant has basis only for a six component red dye mixture comprising the four dyes which are drawn in the originally filed specification. The addition of the two structures is new matter.

Regarding the arguments over Loeffler, applicant's remarks are not persuasive. Loeffler suggests many of the claimed dyes and their use in mixtures to dye hydrophobic fiber material as enumerated above. Although he does not provide working examples of the claimed mixtures, he teaches that many of said dyes are used for the very same purpose, thereby rendering their mixtures prima facie obvious.

Regarding the rejection over Pilcher, applicant's data in the specification is persuasive that the mixture of VIIa-f as presently claimed mixed with VIII provides superior performance. However, Pilcher also teaches applicant's yellow dye mixture which is claimed individually. See pages 11 and 12; formulae 14 and 15 read on the mixture of dyes 1 and 4 as claimed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571-272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Margaret Einsmann

4/28/06

Margaret Einsmann
Primary Examiner
Art Unit 1751